

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**MAR 15 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

BRUCE W. CHRISTENSEN,

Petitioner,

v.

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,  
UNITED STATES DEPARTMENT OF  
LABOR; STEVEDORING SERVICES  
OF AMERICA; and HOMEPORT  
INSURANCE COMPANY,

Respondents.

No. 04-70965

BRB No. 03-0302

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Benefits Review Board

Submitted March 9, 2006<sup>\*\*</sup>

Portland, Oregon

Before: BRUNETTI, T.G. NELSON, and PAEZ, Circuit Judges.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Bruce Christensen petitions for review of the Benefits Review Board's affirmance of the Administrative Law Judge's (ALJ) calculation of his disability awards for two separate injuries. We have jurisdiction pursuant to 33 U.S.C. § 921(c). We grant the petition, reverse and remand.

After the ALJ issued his decision, a panel of this court held in *Stevedoring Services of America v. Price*<sup>1</sup> that 33 U.S.C. § 906(b)(1) sets forth the maximum for each disability award individually, not for the combined awards.<sup>2</sup> Because Christensen's awards individually do not exceed the statutory maximum, *Price* requires us to reverse the Benefits Review Board's decision.<sup>3</sup> Upon remand, Christensen is entitled to receive each award in full.

We decline to address Stevedoring Services of America's (SSA) argument regarding the ALJ's calculation of Christensen's permanent total disability award because it is not properly before us.<sup>4</sup> The argument does not provide an alternative

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<sup>1</sup> 382 F.3d 878 (9th Cir. 2004); *cert. denied*, 125 S.Ct. 1724, 1725 (2005).

<sup>2</sup> *Id.* at 889.

<sup>3</sup> *Id.* at 883 (reviewing de novo the Benefits Review Board's interpretation of 33 U.S.C. § 906).

<sup>4</sup> *See El Paso Natural Gas Co. v. Neztosie*, 526 U.S. 473, 479–82 (1999).

ground for supporting the ALJ's decision; instead, it attacks that decision.<sup>5</sup>

Furthermore, there is no justification for SSA's failure to cross-appeal the issue to this court.<sup>6</sup>

The petition for review is GRANTED; the decision is REVERSED and the matter REMANDED with instructions to calculate Christensen's award in light of *Price*.

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<sup>5</sup> *Id.* at 479; *see Lee v. Burlington N. Santa Fe Ry. Co.*, 245 F.3d 1102, 1107 (9th Cir. 2001).

<sup>6</sup> *See Lee*, 245 F.3d at 1107–08.